



Rhode Island Executive Office of Health and Human Services  
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phone: 401.462.2132 fax: 401.462.0458

June 30, 2015

Docket # 14-2023

Hearing Date: March 3, 2015

## **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)**  
**MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**  
**SECTION 0384: Resource Transfers; .05: Legal Basis; .10: Ineligible for Nursing Facility Payment; .15 Resource Transfer Definitions; .20: Penalty Period for Payment of LTC Services; .35: Exceptions to Periods of Ineligibility**

**SECTION 0382.15.20: Promissory Notes, Loans, and Mortgages**  
**SECTION 0382.15.25.10: Informal Loans**

The facts of your case, the Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: Your attorney, and Agency representatives: Joy Thibodeau Moore, Deborah Castellano, Carol Patras, Thomas Conlon, and the Policy Unit.

Present at the hearing were: Your attorney, your son, and Agency representative Joy Thibodeau Moore.

**ISSUE: Is the appellant ineligible for Long Term Care/Medicaid (LTC/MA) coverage for a period of three months and twenty three days beginning on June 1, 2014 due to a transfer penalty?**

**MCAR RULES AND REGULATIONS:** Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:**

**The Agency representative testified:**

- The transfer penalty is solely based on the self-reporting found on the LTC-167 which the son said was a \$34,000 gift, which is how the transfer penalty was imposed.
- She (the appellant) applied on February 7, 2014.
- From February through the July date there was a period when the appellant was over assets and paid privately, basically denied the application until the assets got to the \$4000 point.
- There was no issue at that time, because her assets were above the standard.
- Transfer penalties are imposed when all the other factors are met, which was on June 1, 2014.
- That happened specifically as a result of the self-reporting, and the Agency did not obtain any other documentation. We informed the appellant's son there would have to be a transfer penalty.
- This is the first time the Agency has heard about the loan, and had they heard this prior they would have requested a specific written loan agreement with a payback schedule.
- The look back period is sixty months from the time of application, so the time the appellant's name was removed from the account is within those sixty months, and the reported amount was \$34,000.
- An exception is made for a transfer penalty if it is for a spouse, or if it is for a disabled child, but that criterion was not met.
- The Agency agrees that they might have reduced the transfer penalty if the son had shown that the payments had been used on behalf of the appellant, but no documentation had been provided.

- The loan issue is a more complicated issue, because of the actual loan and the plan for repayment.
- So much time has passed between the actual conversation (2011) and the plan for the repayment of the loan that there is always a question as to whether this was a loan or a gift, or even if it's going to be a back track, so now it's a loan where it might have been a gift at the time.
- If there was a term of payback that money needs to be paid to the nursing home.
- If there is a held open period, the Agency would process any additional documentation received to determine if the penalty period would appropriately be reduced.
- During the reconvene, the Agency stated that they had explored the evidence submitted, and compared what was transferred into the checking account and what went out for medical expenses which were \$1239.00. As a result, the Agency reduced the penalty period from three months twenty three days to two months two months and twelve days.
- The two figures which were spent on the Friendly Nursing Home totaled \$12390.00, and the actual CD account amount was \$34129.08 instead of \$34,000.00.
- Once received, the Promissory Note was submitted to the Long Term Care Administrator per standard practice, and the Administrator stated that it was not acceptable as a Promissory note, and the response was signed by the Legal Department.
- The reasons for noncompliance include-the note does not clearly prove itself to be post DRA compliant. The full ten thousand could have been paid back at once, to do so, not at \$150 per month beginning in the future.
- With regards to the wood stove, there are many ways to keep someone warm, and if this was something specifically for the appellant's use, it should be something which she could take with her.
- The Agency stated that the item chosen is part of the son's home and raises his property value, not an item for her sole benefit. What was her compensation?
- The additional amount of \$6692 was not accepted because the nursing home informed the Agency that the money was to catch up on the applied income due them. The Agency differentiates because the other monies were clearly paid to the Nursing home prior to her eligibility after the penalty expired in November 2014.

- This occurs after someone is eligible and they pay their income to the nursing home less the cost of the health insurance, minus \$50 for personal needs, and prior to the state picking up the rest of the cost of care, so that money is due them anyway even if the cost of care was due them from day one.
- There is no specific check corresponding to the \$6692, and we were unable to assess information differently without a copy of the check.
- The Agency was told that it was for this purpose.

**The appellant's attorney and her son testified:**

- There is no dispute about the actual figures used by the Agency, and that she (the appellant) had not met the requirements until June 1<sup>st</sup> (2014).
- Only the transfer penalty itself is the issue.
- This is the first time her (the appellants') attorney saw the actual amount in question.
- The son testified that the \$34,000 came from his mother's money market account, which he just closed in February 2015.
- His bookkeeping and accounting records are terrible.
- He took \$15,000 for himself and put it in his account; and, used the balance of the monies-\$19,000 for the nursing home and his mother's care, and that money remained in the money market account.
- He kept the two accounts separate.
- The money market account had been in his mother's name, which they removed in 2011, and put his wife's name on it, with his mother's agreement while she was still healthy.
- She no longer had access to the money, but the monies went to her care.
- The \$15,000 in the son's account was used for two different functions-one, a \$5000 payment, and one, a \$10,000 payment.
- His mother lived with him for twenty months, and then assisted living for 7 weeks in Woonsocket, and then to the Nursing home around July 24, 2013.
- The financial arrangement when she lived with the son was that she paid them a check for about \$500 for food, utilities, and expenses monthly.

- She was sporadic with payment, and they never asked her for additional monies.
- At some point, she complained about a fireplace, because she needed to have the heat cranked up, and the price of oil was going up, so she chose to buy a pellet stove for about \$5000.00.
- She gave them the money to buy her a pellet stove.
- So, \$5000 came out of the \$15,000 and was used for this purchase for his mother, and for which she received the benefit.
- He thinks he wrote this check, because the account was most likely already in his name.
- It was installed in November (2012) and she used it for that first entire winter prior to the time she entered the Assisted Living facility in June 2013.
- The remaining \$10,000 was used towards the purchase of a \$261,000 [REDACTED] franchise for his wife.
- During the terms of the negotiation, his mother was still living with them, and she wanted to help his wife with the down payment of a loan so that the bank loan would be less, and the interest would be less.
- She (the appellant) wanted to loan \$10,000 to help with the down payment, but there were no specific terms.
- It was understood that regular payments would be made to his mother once his wife became more financially successful.
- He had not worked out any terms of the agreement with his mother.
- Once this was completed on April 28, 2014, his mother had already moved into the nursing home.
- Prior to the agreement, his wife's net income was actually greater, but now her expenses include repayment of the bank loan and interest, and she has not yet had extra money to pay back his mother.
- He did use \$19,000 of the \$34,000 for his mother's nursing home care, but he does not have the actual documents which show this.
- He transferred money from the money market account to their joint (mother and son) checking account and he wrote checks out to the nursing home and hand delivered these checks and obtained receipts.

- There should be deposits in the checking account which would show the withdrawals from the money market account.
- During the reconvene-the appellant's attorney questioned the Department's credit of \$12390 which reduced the penalty rate, but their omission of the remaining \$6692.17 which was sent to the Friendly Nursing home.
- Although a check for \$8000+ was given to the home, \$6692.17 was used for her (the appellant's) care just as the prior two payments accepted.
- We believe the nursing home would have used that money for the oldest bills first, and we are not understanding the omission.
- It was the son's understanding that the \$6692 was for the same reasons as the other two payments and he has been paying extra every month since she came on.
- The son has been paying the differential amount on a regular basis-about \$16.64
- We could get a copy of the check and something from the nursing home which clarifies the money in question.
- The two other issues remain-The first is the \$10,000 advanced to his wife (appellant's daughter in law). We understand the Legal Department feels that it is not an appropriate promissory note, and we thought it was drafted to satisfy the obligation. It is payable and the final payment owed to the state would go to them first. We agree it was done after the fact, in an effort to memorialize their (appellant & daughter in law) understanding. Either the state is owed this money or we would have to advocate with the nursing home, but either way it will be paid back.
- All the payments are for the benefit of the state at this point.
- With regards to the wood stove-this was a family decision for something at a time when there was no expectation that the appellant would be leaving the home. It was assumed she would be there the rest of her life.
- Her medical condition now prevents this.
- We believe the rules do not consider if someone makes good or bad decisions about how they spend their money, but the question is whether she gave the money away and got value back.
- The affidavits indicate that she did this for herself and she has a right to do this

despite whether or not it's smart, good, or bad; and, we would press for that \$5000 for which she received the benefit.

- If the state can redo the promissory note and change it to some way they would agree on...
- We would like to clear up the final nursing home payment and send the check as we had been unable to obtain the check yet for evidence.

#### **FINDINGS OF FACT:**

- A Medical Assistance notice dated September 17, 2014 informs the appellant she is eligible for Medical assistance as of June 1, 2014. In free form, the notice also identifies, that the application has been deemed "otherwise eligible", but due to a transfer of assets, a penalty period of 3 months and 23 days has been imposed resulting in Nursing home payments to commence on September 24, 2014.
- A Medical Assistance Letter of Denial, dated September 17, 2014 informed the appellant that she would be penalized 3 months and 23 days on an uncompensated transfer in the amount of \$34,000.00. It further identified the penalty would begin on June 1, 2014.
- A timely appeal was signed by the appellant and her son on October 17, 2014.
- An Administrative Hearing was held on March 3, 2015.
- The record of hearing was held open until April 7<sup>th</sup> for the submission of additional evidence which was submitted by both parties, and reviewed by DHS Legal Counsel prior to submission.
- A reconvene was requested by the appellant in order to discuss the Agency's response to the post hearing evidence submitted by the appellant.
- A reconvened hearing was held on May 13, 2015, and a second held open period was allowed to June 12, 2015 for submission of additional evidence which was received.
- Post hearing, the Agency accepted first-two transactions totaling \$12,390.00 as exceptions for the transfer penalties thereby reducing the penalty period from three months twenty three days to two months and 12 days. Subsequently, the Agency accepted documentation for \$6692.17 paid to the Friendly Nursing home, which further reduced the penalty period to one month and twenty days. Cumulatively, the exceptions totaled \$19,082.17 credited towards payment for the appellant's care.

- Post hearing, the LTCMA Administrator and DHS Legal concurred that the Promissory Note for \$10,000 was not acceptable, and did not cure any of the monies transferred.
- Post hearing, documentation was received which corrected the transfer amount from \$34,000 to \$34,129.08.

## **CONCLUSION:**

The issue to be decided is whether the appellant is ineligible for LTC coverage for a period of three months and twenty three days beginning on June 1, 2014 due to a transfer penalty?

There is no dispute that the appellant applied for Medical Assistance in February 2014, and that she was over assets until June 1, 2014. There is no dispute as well that a transfer penalty was assessed on a \$34,000 money market account, which rendered the appellant ineligible for payment for three months and twenty three days with a starting date of September 24, 2014.

The appellant entered a Nursing home in July 2013, after living in an assisted living program for the seven weeks prior. From around October/November 2012 she had lived with her son and his wife until she required a higher level of care for medical reasons. The appellant's son testified that in 2011 with his mother's agreement, he removed his mother's name from a \$34,000 money market account, and put his wife's name on the account. He withdrew \$15,000 from the account and the remaining \$19,000 was used exclusively for his mother's care. The appellant initially self-reported a \$34,000 gift from his mother when filling out the LTC-167 application. The appellant further presented that the remaining \$15,000 was used for two purposes. The son testified that his mother had willingly, when living with him, given his wife a \$10,000 loan to assist with her purchase of a business franchise. He further testified that at the time of the loan there were no specific terms, but it was understood that regular payments would be made to his mother once his wife became financially successful. The appellant submitted, post hearing, a number of documents, one of which was a "Promissory Note" dated March 17, 2015 in which the appellant put in writing the terms of the payback which was to begin on May 1, 2015. Regarding the third issue, the son testified that the remaining \$5,000 was used towards the purchase of a wood stove, which his mother desired, requested, chose to pay for, and used for one full winter prior to her institutionalization for medical reasons. The son testified and presented evidence that the wood stove had been purchased in October 2012 for \$4080, with an initial outlay of \$319 for wood pellets, and a remaining balance of \$600 used towards installation and additional pellets. This arrangement was made when his mother was still living with him-a living arrangement which he thought would be long lasting. He testified that she had seen a commercial on television and expressed her desire to have a much warmer home. Post hearing the appellant, through a sworn written statement verified this account and further identified that the son had initially used his own money to purchase the items



through use of his credit card. She had reimbursed him when the transfer to the money market account took place-\$5000 stove, and-\$10,000 for the loan.

The Agency testified that upon receipt of the LTC-167, they did not assess the appellant's account further as a result of the self-reporting by the appellant and her son. The Agency cited that the monies fell into a look back period of sixty months from application and the appellant had been assessed a penalty period for a transfer of funds during that period. She explained that when all other factors had been met for the appellant on June 1, 2014, the penalty period began. However during the presentation at hearing, and after receipt of sufficient documentation, the Agency agreed to reduce the amount of the penalty from three months and twenty three days to one month and twenty days, following their acceptance of three payments to the Friendly Nursing Home which totaled \$19,082.17. With regards to the second issue of the loan, the Agency considered the loan to have no initial repayment agreements. They expressed that a considerable amount of time between the first discussions in 2012 and the current presentation to DHS in 2015 brought into question whether the monies were originally a loan or a gift. Per policy the Agency presented the post hearing "Promissory Note" to the DHS Long Term Care Administrator and it was reviewed by DHS Legal Department as well. They concurred with the DHS worker in that they did not accept the note. The worker identified that the Legal response found the note did not clearly prove itself to be post DRA compliant. To do so, "the full ten thousand could have been paid back at once"..., "not at \$150 per month beginning in the future." In response to the third issue-the stove-the Agency did not accept post hearing, either the affidavit from the appellant or the documentation of purchase. The Agency argues that there are many ways to keep someone warm, and if the stove was specifically for the appellant's use, it could be something which she could take with her. Furthermore, they opine that the stove raises the value of the son's property and they could not see the compensation received by the appellant.

The appellant's attorney countered that the appellant had a right to choose this option, whether good, bad, or financially sound. He contends that the question is not whether others may have received some benefit from her purchase, but whether or not she received value from her purchase.

MA Regulations establish a period of time (i.e. a penalty period) "during which payment for long term services is denied. The number of months is equal to the total uncompensated value of prohibited transfers made by the institutionalized individual...during the thirty six or sixty month period immediately prior to the date of institutionalization..." The omnibus Budget Reconciliation Act (OBRA) of 1993 provides for penalties for individuals on or after 8/11/93, who transfer or have transferred assets for less than fair market value. The calculation of the length of the penalty period for a prohibited transfer is obtained by dividing the amount of the uncompensated value (UV) of the transfer by the average monthly cost for private payment in a nursing facility. Currently, the average monthly cost in a facility is \$9,113 per month. Accordingly, the Agency first assessed the appellant for a penalty period of three months and twenty three days as a result of a self-reported gift of \$34,000 transferred to the appellant's son

during the sixty month look back period from the date of application. No initial explanations were presented which would have allowed exemptions on behalf of the appellant. Following submission of evidence of payments to the nursing home on behalf of the appellant, the Agency reduced the period to one month and twenty days.

Further exploration of regulations with regards to Promissory notes, and informal loans shows that a note is a written agreement signed by a person who promises to pay a specific sum of money at a specified time, or on demand, to the person or organization named on the note as holder. An informal loan agreement may be negotiated between individuals less formally, but amongst other criterion there must be a timetable and plan of repayment. The Agency's Long Term Care administrator and the DHS Legal Department ruled that the documentation after the fact, did not cure the transfer penalty. The appellant's attorney identified that despite the DHS legal department's finding that the note prepared by the appellant in March does not satisfy their findings, that does not "change the character of the transaction". The appellant's son testified to the informality of the initial discussion several years ago. He first described the money market as a gift when filing the LTC-167, but later testified and presented evidence that his mother had wanted to loan his wife the monies. However, the note does not meet the MA regulations, and is considered DRA noncompliant, resulting in consideration of the \$10,000 as a gift. The \$10,000 will not be excluded for transfer penalty considerations.

The final issue in dispute is the wood stove purchase. Post hearing the appellant presented documentation of the purchase of the stove as well as an affidavit in which she identified her decision to purchase the stove with her money. Regulations allow exceptions to the transfer period of ineligibility if the individual can prove his intention was to receive fair market value or other valuable compensation/consideration. In this case, the appellant's son presented credible evidence that his mother (the appellant) had seen a television commercial, which prompted her to choose to purchase a wood pellet stove in order to keep warm. The appellant's attorney argued that although other people in the home may have benefited/or will benefit from the purchase, that does not change the fact that the appellant chose to purchase the item of her own accord, for her own benefit, and with her own money. The son testified that the price of oil was rising and he was not able to keep the home as warm as the appellant desired. He further argues that at the time of the purchase, the appellant was in good health, and the intent was for her to remain in her sons' home indefinitely. The appellant had the benefit of the use of the heat for one full winter prior to entering the nursing home. The son's credible testimony and the supporting documentation establish that the stove was purchased by and for the appellant's use. The appellant appears to have gotten compensation and fair market value for her purchase in the form of heat and comfort. As a result, the wood stove will be excluded from the transfer penalty.

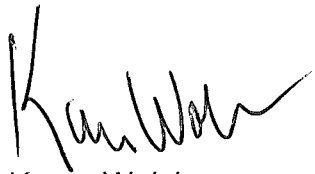
In summary, the appellant was initially assessed a transfer penalty of three months and twenty three days for a transfer of a \$34,000 money market account during the sixty month look back period. Subsequent documentation resulted in reconsideration by the Agency of \$19,082.17 which was used directly for the appellant's care. The Agency further reduced the penalty to one month and twenty days. The appellant will be allowed

the additional reduction of the penalty by \$5000 spent for a wood stove. The appellant will not be awarded the exemption of the \$10,000 given to the appellant's daughter in law towards a loan or gift. The evidence revealed as well that the actual money market amount to be considered is \$34,129.08.

After a careful review of the Agency's regulations, as well as the evidence and testimony given, this Appeals Officer finds that the appellant's request to reduce the penalty period is granted.

**ACTION FOR THE AGENCY:**

**The Agency is to recalculate the penalty period considering only the \$10,000 as the amount under consideration. The penalty period determined is to begin on June 1, 2014.**

A handwritten signature in black ink, appearing to read 'Karen Walsh', with a stylized, flowing script.

Karen Walsh  
Appeals Officer

## APPENDIX

## **EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)**

### **MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

#### **0384 Resource Transfers**

##### **0384.05 Legal Basis**

REV: April 2014

The Omnibus Budget Reconciliation Act (OBRA) of 1993 provides a penalty for institutionalized individuals who on or after 8/11/93, transfer or have transferred assets for less than fair market value. Asset transfers, prior to February 8, 2006, are examined for potential penalty when the transfer took place within thirty six (36) months prior to or any time after the date the individual was both institutionalized and applied for Medicaid. All asset transfers made on or after February 8, 2006 shall be subject to a look back period of sixty (60) months.

Under OBRA provisions, trusts and/or portions of trusts established on or after 8/11/93 are in some cases treated as a transfer of assets and subject to a penalty. Asset transfers involving a trust are examined for potential penalty when the transfer took place within sixty (60) months prior to or any time after the date the individual was both institutionalized and applied for Medicaid. In the event that application of the transfer rules and the trust rules result in an individual being subject to a transfer penalty twice for actions involving the same resource, the trust rules supersede the transfer rules in determining eligibility. (See Medicaid Code of Administrative Rules (MCAR) Section 0382 for detailed information about Trusts.)

The Deficit Reduction Act of 2005 (DRA) provides a penalty for institutionalized individuals who on or after February 8, 2006, transfer or have transferred assets for less than fair market value.

All asset transfers made on or after February 8, 2006 are examined for potential penalty when the transfer took place within sixty (60) months prior to or any time after the date the individual was both institutionalized and applied for Medical Assistance.

The penalty is a period of restricted Medicaid eligibility during which payment for Long Term Care Services is denied. Long Term Care Services include nursing facility services, Intermediate Care Facility Services for the Mentally Retarded (ICF-MR), administratively necessary days in a hospital, and home and community based waiver services.

The computation of the penalty period for transfers of assets made prior to February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 0384.20.

The computation of the penalty period for transfers of assets made on or after February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 0384.25.

The uncompensated transfer of resources which have been disregarded under the Qualified Long Term Care Insurance Partnership Program are treated as the uncompensated transfer of any other resource.

##### **0384.10 Individuals Ineligible for Nursing Facility Payment**

REV: April 2014

Unless exempt, transfers of assets (income and resources) made for less than fair market value by an institutionalized individual (or the community spouse - if made prior to the establishment of the applicant's Medicaid /LTC eligibility) are subject to a penalty if the transfer was made:

A. For transfers of assets made prior to February 8, 2006 within thirty six (36) months immediately prior to or any time after the date the individual was both institutionalized AND applied for Medicaid; or

B. For transfers of assets made on or after February 8, 2006, within sixty (60) months immediately prior to or any time after the date the individual was both institutionalized AND applied for Medicaid; or

C. If the transfer involves a trust, within a sixty (60) month look back period immediately prior to or any time after the date the individual was both institutionalized AND applied for Medicaid.

D. Since transfers involving a trust have for many years already been subject to a look back period of 60 months, their treatment is unaffected by Paragraph B. above. The look-back period in Paragraph B, above, is effective for all other transfers made on or after February 8, 2006. As a result of this phase in, the look back periods, and those transfers which must be reported by applicants, are as follows:

For applications which are filed from February 8, 2011 and thereafter, the look back period is sixty (60) months immediately prior to or any time after the date the individual was both institutionalized AND applied for Medicaid.

If the individual has multiple periods of institutionalization and/or applications, the look back period starts with the first date on which the individual was both institutionalized and applied for Medicaid.

The penalty is a period of ineligibility for payment of long term care services for an otherwise eligible individual.

For transfers of assets prior to February 8, 2006 see Section 0384.20 for the rules as to how the penalty period is calculated and how it is imposed.

For transfers of assets on or after February 8, 2006 see Section 0384.25 for the rules as to how the penalty period is calculated and how it is imposed.

## **0384.15 Resource Transfer Definitions**

REV: April 2014

For purposes of evaluating transfers of assets, the following definitions apply:

### **1. Assets** means:

All income and resources of the individual or the individual's spouse that would be countable in the determination of Medicaid eligibility for an SSI-related individual; and

The home (and associated land) of an institutionalized individual.

3

This includes any income and resources to which the individual or his/her spouse is entitled but does not receive because of action taken by:

The individual or his/her spouse;

A person, including a court or administrative body, with legal authority to act in place of the individual or his/her spouse; or

Any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

### **2. Compensation/Consideration** means:

All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer.

### **3. Fair Market Value (FMV)** means:

The amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer.

**4. Institutionalized Individual** means:

An inpatient of a nursing facility, an inpatient of a medical institution for whom payment is based on a level of care provided in a nursing facility, an inpatient of an intermediate care facility for the mentally retarded (ICF-MR), and/or a home and community based waiver recipient.

**5. Sole Benefit** means:

A transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or a blind or disabled individual, when the transfer is established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the spouse, blind or disabled child, or blind or disabled individual only, and that no one else can benefit from the assets transferred. Without this agreement, a transfer cannot be determined to be for the sole benefit of the individual.

**6. Long Term Care Services** means:

Services provided to individuals in nursing facilities, ICF-MRs, as an inpatient in a medical institution for whom payment is based on a level of care provided in a nursing facility, and under home and community based waivers and administratively necessary days.

**7. Look Back Date** means:

The look back date is a date that is the appropriate number of months, as provided for in Section 0380.05, before an institutionalized individual has applied for Medicaid

**8. Look Back Period** means:

The look back period is that period of time beginning with the look back date through the date an institutionalized individual has applied for Medicaid.

**9. Penalty Period** means:

The period of time during which payment for long term care services is denied. The number of months in a penalty period (P) is equal to the total uncompensated value (UV) of prohibited transfers made by the institutionalized individual (or spouse, if made prior to establishment of individual's Medicaid /LTC eligibility) during the thirty-six (36) or sixty (60) month period immediately prior to the date of institutionalization (or if later the date of Medicaid application) divided by the average monthly cost of a private patient in a nursing facility at the time of application. For transfers made on or after February 8, 2006, the penalty period begins from the date of transfer or the date that the individual would have otherwise been eligible, whichever is later.

$$P = UV/C$$

**10. Prohibited Transfer** means:

Transfer of an asset for less than fair market value by an individual (or spouse, if made prior to establishment of individual's Medicaid /LTC eligibility) which was made within thirty-six (36) months or sixty (60) months prior to or any time after the date the individual was both institutionalized and applied for Medicaid.

**11. Transfer** means:

The conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process; or the gift or assignment of income from one person to another. Disposal of a lump sum payment before it can be counted as a resource can be an example of a transfer of income.

Transfers made by an individual include transfers made by:

The individual;

His/her spouse;

Any person, including a court or administrative body, with legal authority to act on behalf

of the individual or his/her spouse; or

Any person, including a court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

**12. Uncompensated Value (UV)** means:

The equity value (fair market value less any outstanding loans, mortgages or other encumbrances) minus the value of any compensation /consideration received by the applicant/recipient in exchange for the asset.

#### **0384.20 Penalty Period for Payment of Long Term Care Services**

REV: April 2014

The rules in this section, MCAR 0384.20, apply to transfers of assets which occurred prior to February 8, 2006.

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of ineligibility for payment of long term care services.

A. The following provisions apply in determining the penalty period for a prohibited transfer:

**1. Start date of the penalty period.**

The penalty period begins on the first day of the month in which the transfer was made and runs continuously from the penalty date regardless of whether the individual remains in or leaves the institution (or waiver program). Thus, if an individual leaves the nursing facility, the penalty period nevertheless continues until the end of the calculated period.

**2. Calculation of the length of the penalty period**

To calculate the penalty period (P) for a prohibited transfer, divide the amount of the uncompensated value (UV) of the transfer by the average monthly cost (C) for private payment in a nursing facility.

$$P = UV/C$$

Currently, the average monthly cost for private payment in a nursing facility is \$9,113 per month.

When more than one prohibited transfer occurs during the same month, the uncompensated values of all prohibited transfers made during the month are totaled, then divided by the average monthly private payment for an individual in a nursing facility.

Penalty periods are imposed for full months only; penalty periods of less than one month are not imposed. There is no maximum length to the penalty period. However, no penalty is imposed for resources transferred prior to the look back period.

#### **0384.35 Exceptions to Period of Ineligibility**

REV: April 2014

A penalty period is not imposed when:

The asset was transferred for fair market value;

The transferred resource was the individual's home and title to the home was transferred to the individual's spouse; a child of the individual who is under the age of 21, or is blind, or permanently and totally disabled (as evidenced by receipt of SSI or RSDI benefits, or as defined in MCAR Section 0352.15); a sibling of the individual who has an equity interest in the home and who resided in the home for at least one year immediately prior to the institutionalization of the individual; a son or daughter of the individual who: was residing in the home for at least two years prior to the parent's institutionalization; and can demonstrate that s/he provided care to the parent which prevented the parent from entering an institution for the two year period.



The asset (other than a home, see above) was transferred to: the spouse, or to another for the sole benefit of the spouse, or from the spouse to another for the sole benefit of the spouse; the individual's child who is blind or permanently and totally disabled, or to another or the sole benefit of such child; or to a trust established for the sole benefit of such child; a trust established for the sole benefit of an individual who is under the age of 65 and permanently and totally disabled (as defined in MCAR Section 0352.15);

The individual can prove his/her intention was to receive fair market value or other valuable compensation/ consideration;

The individual can prove the transfer was exclusively for some purpose other than to qualify for Medicaid;

Denial of payment for long term care services would work an undue hardship;

The asset is returned to the individual.

NOTE: Annuities that:

1. were obtained on or between February 8, 2006 and December 31, 2008 and
2. during that time, complied with EOHHS policy as it was promulgated in July 2006, by naming the state as a beneficiary of the remainder of the annuitant's annuity, and
3. were not subsequently changed to preclude the naming of the state as a beneficiary for the Medicaid expenses of the institutionalized and/or community spouse and
4. are documented by the issuer to be unable to be changed to comply with the requirement to name the state as a beneficiary for recovery of Medicaid up to the amount of Medicaid paid on behalf of the institutionalized spouse, based on the terms and conditions of the annuity contract, are deemed to meet the criteria listed above, that "The individual can prove his/her intention was to receive fair market value or other valuable compensation / consideration."

### **0382.15.20 Promissory Notes, Loans and Mortgages**

REV: 06/1994

In some financial transactions, the applicant may be the lender who is the person to whom money is owed. This section sets forth the policy for considering transactions or agreements in which the applicant is the lender, or the person to whom money is owed.

Section 0382.15.25 provides policy when the applicant is the borrower, and receives the proceeds of a loan.

Types of instruments in which the applicant may be the lender are:

#### **Promissory Notes**

A promissory note is a written agreement signed by a person who promises to pay a specific sum of money at a specified time, or on demand, to the person or organization named on the note as holder. The note may be secured by real estate (a mortgage), or a security agreement on personal property (Chattel mortgage). A promissory note held by an individual is a resource of the individual.

#### **Loans**

A loan is a transaction in which one party advances money (or other property) to another party who promises to repay the amount of the loan in full within his/her lifetime, with or without interest.

The loan agreement may be oral or written. When an applicant has loaned money to another, the loan is a resource to the applicant, subject to the policy regarding its negotiability, valuation and salability set forth in the following sections.

### **0382.15.25.10 Informal Loans**

REV: February 2014.

Loans which are negotiated between individuals may be less formal, even unwritten. A bona fide loan may exist without a written contract. The loan need not be secured by specific items of collateral. A loan agreement (oral or written) must include all the following to be considered bona fide: The borrower's acknowledgement of an obligation to repay (with or without interest); and A timetable and plan of repayment; and The borrower's express intent to repay the loan by pledging real or personal property or anticipated income. It is not necessary that the loan be secured by real or personal property.

It is necessary that the borrower express intent to repay the loan when funds become available in the future and indicate that s/he will begin repaying the loan when s/he receives future anticipated income. If the agreement is oral, statements are obtained from all parties to the loan, and any witnesses to the transaction. The agency representative evaluates the statements to determine if the loan is bona fide.

All documents relating to informal loans are photocopied and retained in the case record.

Questionable situations are referred by memo through LTSS/AS to the Office of Legal Services for review. All available documentation is attached to the memo.

### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.